

Attachment A – Part 2

<p style="text-align: right;">Page 46</p> <p>1 time discuss or disclose any opinions 2 relative to the shipment of product on 3 the Kinder Morgan pipeline system for 4 northern California? 5 A. No, I did not. 6 Q. At any point in time did 7 you disclose in the reports you prepared 8 in this case, Exhibits 5, 6, and 7, any 9 opinions relative to the distribution of 10 petroleum products, including gasoline 11 with MTBE, on the Kinder Morgan pipeline 12 system for southern California? 13 A. No, I did not. 14 Q. With respect to the work 15 that you've done in this case and the 16 reports that you've prepared, Exhibits 17 5, 6, and 7, did you ever disclose any 18 opinions relative to the relative rank 19 of Exxon and Mobil in sales of motor 20 fuels in the United States for the 21 period 1985 to 2003 in those reports? 22 A. No, I did not. 23 Q. With regard to the opinions 24 that you expressed in this case, did you</p>	<p style="text-align: right;">Page 48</p> <p>1 Q. And with regard to the 2 ranking of Mobil during the period from 3 1985 to 2000, can you tell us what the 4 rank was for Mobil for sales of 5 petroleum products including gasoline? 6 MS. AMRON: Objection. Are 7 you talking national or some other area? 8 MR. STACK: I will rephrase 9 the question. 10 BY MR. STACK: 11 Q. You have provided national 12 ranking in the testimony you have given 13 here for certain statistics. With 14 regard to national ranking of Mobil Oil 15 prior to 2000, can you tell the jury in 16 this case what their ranking was? 17 A. For just Mobil during that 18 time period, Mobil would have been in, I 19 would say, the top five. 20 Q. Can you tell us 21 specifically what their rank was? 22 A. I could not. 23 Q. Can you tell us how much 24 gasoline Mobil marketed from 1985 to</p>
<p style="text-align: right;">Page 47</p> <p>1 at any time express any opinions about 2 the refining and distribution of 3 gasoline in California by Exxon and 4 Mobil during the period 1985 to 2003? 5 MS. AMRON: I'm just -- I'm 6 going to object on the grounds of 7 vague. Are you talking about the 8 opinions in his reports? 9 MR. STACK: I will rephrase 10 it. 11 BY MR. STACK: 12 Q. With regard to the reports 13 that you authored, Exhibits 5, 6, and 7, 14 did you express any opinions in those 15 reports relative to the refining of 16 gasoline by Exxon and Mobil in 17 California, including the period 1985 18 through 2003? 19 A. No, I did not. 20 Q. Now, prior to the year 21 2000, were Exxon and Mobil competitors 22 in the sale of motor fuels? 23 A. I would agree with that, 24 yes.</p>	<p style="text-align: right;">Page 49</p> <p>1 2000 which was reformulated gasoline? 2 A. Again, nationally? 3 Q. Yes, sir. 4 A. No, I could not. 5 Q. Can you tell the jury in 6 this case how Mobil stacked up against 7 its competitors for refining gasoline 8 with RFG when compared to other refining 9 companies? 10 A. Sorry. How do you mean 11 "stacked up"? 12 Q. Yes, sir. When you compare 13 Mobil as a refiner of reformulated 14 gasoline to other refiners, can you tell 15 us how they were ranked, how they 16 stacked up against their competition? 17 A. From a volume point of 18 view, you mean? 19 Q. Whatever. Percentage of 20 market, volume, whatever you choose. 21 MS. AMRON: Objection, vague 22 and compound. 23 A. I cannot give a specific 24 percentage or market share for them, no.</p>

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<p>1 Q. With regard to the refining 2 of reformulated gasoline, can you tell 3 the jury how Exxon was ranked in 4 refining gasoline for reformulated fuel 5 blends when compared to its competitors 6 in the period from 1985 up through 2000? 7 A. Well, I would say Exxon, 8 similar to Mobil during that time 9 period, would generally have been ranked 10 in the top five for total -- 11 Q. Can you tell us 12 specifically what the rank is? 13 MS. AMRON: Mr. Stack, can 14 you let the witness finish? 15 MR. STACK: I thought he was 16 finished. I'm sorry. There's a delay 17 on the phone. I apologize. 18 THE WITNESS: No problem. I 19 was saying that during that time period 20 Exxon, similar to Mobil, would have been 21 ranked typically in the top five in the 22 country for total gasoline sales. 23 I cannot tell you what each 24 year the ranking was because they would</p>	<p>1 consultant directly for the Yellowstone 2 pipeline company? 3 A. I have not. 4 Q. Have you ever worked 5 directly for the LaSal, capital L-A, 6 capital S-A-L, pipeline company? 7 A. I have not. 8 Q. Have you ever done any work 9 relative to the Mobil southern 10 California proprietary pipeline system? 11 A. Directly for that system, 12 no. No. 13 Q. Have you ever done any work 14 for the Mobil proprietary New England 15 pipeline system? 16 A. No. 17 Q. Have you ever done any work 18 as a consultant directly for the Exxon 19 Texas proprietary pipeline system? 20 A. I have not. 21 Q. Have you ever done any work 22 for Mobil in working as a consultant on 23 its Mid-Atlantic proprietary pipeline 24 system?</p>
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<p>1 move around a bit for both companies and 2 they are competitors. 3 As far as the reformulated 4 gasoline share, I cannot specifically 5 tell you what the ranking was. 6 Q. With respect to your 7 professional work, have you ever worked 8 directly for Exxon pertaining to its 9 refining operations in California? 10 A. Not that I recall. 11 Q. Have you ever worked 12 directly for Mobil pertaining to its 13 refining operations in California? 14 A. No. 15 Q. With respect to pipeline 16 companies, you indicated that you worked 17 as a consultant for some pipeline 18 companies. Have you worked directly for 19 Kinder Morgan? 20 A. I have not. 21 Q. Have you worked directly 22 for the Santa Fe pipeline company? 23 A. No. 24 Q. Have you ever worked as a</p>	<p>1 A. I have not. 2 Q. Have you ever worked as a 3 consultant for the Wolverine pipeline 4 system? 5 A. I have not. 6 Q. Have you ever worked as a 7 consultant for the Badger pipeline 8 system? 9 A. I have not. 10 Q. Did you ever work as a 11 consultant directly for the Explorer 12 pipeline system? 13 A. I have not. 14 Q. Have you ever worked 15 directly for the TEPPCO pipeline system? 16 A. I have not. 17 Q. Did you ever work for 18 its -- TEPPCO's predecessor, the Texas 19 Eastern Petroleum Products Company? 20 A. I have not. 21 Q. Did you ever work for the 22 Magellan pipeline company system? 23 A. No, I have not. 24 Q. Have you ever worked as a</p>

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<p style="text-align: right;">Page 54</p> <p>1 consultant directly for the William 2 Brothers pipeline system? 3 A. No, I have not. 4 Q. Can you tell the jury where 5 the Santa Fe pipeline system ships 6 product in the United States? 7 A. Well, the Santa Fe pipeline 8 system you are referring to what is now 9 owned by Kinder Morgan? 10 Q. If that's your 11 understanding, sir, yes. Can you tell 12 the jury where the Santa Fe pipeline 13 system ships product in the United 14 States? 15 A. Well, there's two branches 16 within the Kinder Morgan California 17 common carrier system. In the northern 18 branch there's a Santa Fe pipeline 19 system, which runs from, really, San 20 Francisco across, I believe, right to 21 Reno. 22 Q. And with regard to the 23 Santa Fe pipeline system, can you tell 24 the jury what the years of operation</p>	<p style="text-align: right;">Page 56</p> <p>1 A. It was. 2 Q. And with regard to the 3 southern spur from Los Angeles eastward, 4 do you know if that was a common carrier 5 pipeline? 6 A. It was. 7 Q. And do you know when Kinder 8 Morgan acquired the northern spur of the 9 Santa Fe system? 10 A. I don't recall. 11 Q. Can you tell the jury in 12 this case when Kinder Morgan acquired 13 the southern portion of the Santa Fe 14 system from Los Angeles to points east? 15 A. No. Kinder Morgan has been 16 acquiring assets around the country for 17 some time. I don't recall that specific 18 date. 19 Q. Do you know specifically 20 when Kinder Morgan took over the 21 southern spur for the Santa Fe system 22 going from Los Angeles east to Barstow 23 and thence to Phoenix? 24 A. No, I don't.</p>
<p style="text-align: right;">Page 55</p> <p>1 were for Santa Fe? 2 A. I cannot, no. 3 Q. With respect to the 4 Santa Fe pipeline system, can you 5 describe any other components of that 6 pipeline system other than the line that 7 extends from the San Francisco Bay area 8 to Reno? 9 A. Well, there's a component 10 of the Santa Fe pipeline system in the 11 Kinder Morgan southern common carrier 12 system, which runs, I believe, from Los 13 Angeles through -- I can't say 14 specifically where it ends, but it is 15 basically heading eastward on that 16 system. You know, it's been 17 incorporated into those common carrier 18 systems. 19 Q. Do you know -- and prior to 20 being incorporated into the common 21 carrier systems, do you know whether the 22 Santa Fe northern spur you described for 23 San Francisco to Reno was a common 24 carrier pipeline?</p>	<p style="text-align: right;">Page 57</p> <p>1 Q. With regard to the Santa Fe 2 system, do you know what the minimum 3 batch size was for Santa Fe? 4 A. No, I don't. 5 Q. Do you know what the 6 practice and protocol was for tendering 7 product of specific grades to the 8 Santa Fe system? 9 MS. AMRON: Object on 10 relevance. 11 A. I would have to look, like 12 for most pipeline systems, look at the 13 tariff information for that system where 14 it is defined. That level of detail 15 is -- that's what tariffs are for. 16 Q. Did you review the tariffs 17 for the Santa Fe pipeline systems before 18 you appeared here to testify today? 19 A. No. 20 Q. Can you tell the jury in 21 this case at what locations along the 22 Santa Fe pipeline Exxon had proprietary 23 tankage for its products? 24 MS. AMRON: Objection,</p>

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<p style="text-align: right;">Page 58</p> <p>1 relevance.</p> <p>2 A. No, I cannot say that.</p> <p>3 Q. With respect to the</p> <p>4 southern spur, can you tell the jury in</p> <p>5 this case at what locations on the</p> <p>6 Santa Fe system Mobil had proprietary</p> <p>7 tankage?</p> <p>8 MS. AMRON: Objection,</p> <p>9 relevance.</p> <p>10 A. No, I cannot say.</p> <p>11 Q. With regard to the Santa Fe</p> <p>12 system, do you know whether Santa Fe had</p> <p>13 a distinction in its rates for shipping</p> <p>14 segregated or commingled product?</p> <p>15 A. Again, I have to look at</p> <p>16 the tariffs where that detailed</p> <p>17 information is kept, but the answer is</p> <p>18 no, I don't know that.</p> <p>19 Q. With regard to the LaSal</p> <p>20 pipeline system, can you tell the jury</p> <p>21 whether the LaSal pipeline system ships</p> <p>22 motor fuels in the country?</p> <p>23 A. I've not worked with the</p> <p>24 LaSal pipeline system, so I cannot say.</p>	<p style="text-align: right;">Page 60</p> <p>1 California proprietary pipeline system?</p> <p>2 A. No, I never -- that was</p> <p>3 never a requirement, to learn that kind</p> <p>4 of level of detail.</p> <p>5 Q. And with regard to the</p> <p>6 Torrance refinery, do you know, for the</p> <p>7 years 1985 to 2000, how much product out</p> <p>8 of Torrance was shipped on the Mobil</p> <p>9 southern California proprietary system?</p> <p>10 A. No. There's -- that's not</p> <p>11 publicly available information and I</p> <p>12 certainly do not have it.</p> <p>13 Q. With regard to the Mobil</p> <p>14 southern California proprietary system,</p> <p>15 do you know if that system accepted</p> <p>16 deliveries from any refinery other than</p> <p>17 the Mobil Torrance refinery?</p> <p>18 A. My understanding is that</p> <p>19 system does act as a common carrier</p> <p>20 pipeline system.</p> <p>21 Q. And what do you base your</p> <p>22 understanding that it's a common</p> <p>23 carrier?</p> <p>24 A. I think in looking at the</p>
<p style="text-align: right;">Page 59</p> <p>1 Q. With regard to the</p> <p>2 Yellowstone pipeline system, can you</p> <p>3 describe for the jury in what geographic</p> <p>4 areas of the United States the</p> <p>5 Yellowstone pipeline system ships</p> <p>6 product?</p> <p>7 A. It is in Montana,</p> <p>8 primarily.</p> <p>9 Q. And do you know with</p> <p>10 respect to the Yellowstone system what</p> <p>11 refineries place product into that</p> <p>12 system?</p> <p>13 MS. AMRON: Objection,</p> <p>14 relevance.</p> <p>15 A. Just trying to think. I</p> <p>16 would say -- I suspect the Exxon Mobil</p> <p>17 Billings refinery does. But beyond</p> <p>18 that, basically I would have to look at</p> <p>19 the details of the refineries which are</p> <p>20 connected to them.</p> <p>21 Q. In the course of your work</p> <p>22 in California on a variety of</p> <p>23 assignments, did you ever learn what the</p> <p>24 right-of-way was for the Mobil southern</p>	<p style="text-align: right;">Page 61</p> <p>1 system in the past. It was a fairly</p> <p>2 high-level look. As I recall, that</p> <p>3 system was common carrier.</p> <p>4 Q. And can you identify for us</p> <p>5 any document that shows that the Mobil</p> <p>6 proprietary pipeline system in southern</p> <p>7 California is a common carrier?</p> <p>8 A. I cannot produce a document</p> <p>9 right here, no.</p> <p>10 MR. STACK: I understand</p> <p>11 we're about to run out of tape, so let's</p> <p>12 take a break to permit Larry to change</p> <p>13 out the tape.</p> <p>14 THE VIDEOGRAPHER: We're</p> <p>15 going off the record. The time is</p> <p>16 3:14 p.m. This is the end of tape 1 of</p> <p>17 the deposition of Bruce F. Burke.</p> <p>18 (Recess.)</p> <p>19 THE VIDEOGRAPHER: We're</p> <p>20 back on the record. The time is</p> <p>21 3:17 p.m. This is the start of tape 2</p> <p>22 of the deposition of Bruce F. Burke.</p> <p>23 BY MR. STACK:</p> <p>24 Q. Mr. Burke, have you ever</p>

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<p>1 seen any posted tariffs for shipment of 2 product on the Mobil southern California 3 pipeline system for other parties other 4 than Mobil to ship? 5 A. I don't recall. You know, 6 I haven't looked in detail at that 7 system. 8 As I said, you know, I 9 reviewed the general shipping and 10 movement of gasoline in California. But 11 the answer is no, I can't recall the 12 specifics of the -- that system's 13 tariffs. 14 Q. With respect to Mobil's 15 proprietary pipelines, have you ever 16 reviewed any information pertaining to 17 the Mobil New England proprietary 18 pipeline system? 19 A. No, I have not. 20 Q. Do you know to what 21 geographic areas the Mobil proprietary 22 New England system distributes petroleum 23 products including gasoline? 24 A. No. I mean, I just know</p>	<p>1 Midwest from the Gulf Coast. 2 Q. And with regard to TEPPCO, 3 do you know what, if any, of the Exxon 4 Mobil refineries you've identified ship 5 product on TEPPCO? 6 A. I would say that the Exxon 7 Mobil pipelines at the Gulf Coast, maybe 8 not directly, but through transfers on 9 either their proprietary pipelines and 10 then through to the TEPPCO pipeline, 11 would generally be shipping some product 12 on TEPPCO. However, I do not have 13 access to Exxon Mobil proprietary 14 shipping data. 15 Q. With regard to the work 16 that you did in this case, can you 17 describe which of the Exxon Mobil 18 refineries in the Gulf Coast are 19 connected to the Magellan system? 20 A. No, I did not look at that. 21 Q. And with regard to the 22 Magellan system, can you identify for 23 the jury in this case what states 24 receive petroleum products including</p>
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<p>1 that it's basically a fairly limited 2 system, relatively -- maybe not from 3 Mobil's perspective, but relatively 4 minor system from a national point of 5 view. But, no, I cannot give you the 6 specific details of that system. 7 Q. And do you know whether 8 anyone other than Mobil has shipped 9 product on the Mobil New England 10 pipeline system? 11 A. I do not. 12 Q. With respect to the Mobil 13 Mid-Atlantic pipeline system, do you 14 know to what geographic areas that 15 pipeline delivers product? 16 A. No. Again, that's -- you 17 know, I have tended to focus on the 18 major common carrier systems as opposed 19 to the proprietary systems, so I cannot 20 answer that. 21 Q. With regard to the TEPPCO 22 system, do you know what geographic area 23 TEPPCO supplies product to? 24 A. It supplies up to the upper</p>	<p>1 gasoline on the Magellan system? 2 A. No, I haven't really looked 3 at the Magellan system. 4 Q. With regard to the Williams 5 Brothers pipeline system, can you 6 describe for the jury which of the Gulf 7 Coast refineries identified in your 8 reports provide product to the Williams 9 Brothers system? 10 A. No. No. 11 Q. With regard to the Williams 12 Brothers systems, can you tell the jury 13 in this case to what states it delivers 14 product? 15 A. No, I cannot say which 16 states. 17 Q. With respect to the 18 Wolverine pipeline system, can you tell 19 the jury in this case what refineries 20 operated by Exxon or Mobil may have 21 shipped product on Wolverine? 22 A. I would except that the 23 Joliet refinery would have. 24 Q. And with regard to the</p>

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<p style="text-align: right;">Page 66</p> <p>1 Badger pipeline system, can you tell the 2 jury what refineries operated by Exxon 3 or Mobil may have shipped on Badger? 4 A. No, I could not. 5 Q. With regard to the 6 Wolverine system, do you know if the 7 Wolverine system ever shipped product 8 with MTBE? 9 A. Well, the Wolverine system 10 is a big system. It ships plenty of 11 gasoline and it's been in existence 12 certainly back into -- well into the 13 '90s when quite a bit of MTBE gasoline 14 was shipped around the country. I can't 15 say for sure that it shipped MTBE 16 gasoline. I would say that I would 17 expect that it did, though. 18 Q. With regard to the 19 Wolverine system, can you tell the jury 20 in this case in what year they 21 established -- 22 (Interruption by 23 teleconference operator.) 24 MS. AMRON: Bill?</p>	<p style="text-align: right;">Page 68</p> <p>1 Mobil refineries at the Gulf Coast would 2 have access and would have shipped on 3 the Explorer pipeline, but, again, I 4 don't have access to those shipping 5 records. They are proprietary and so I 6 cannot say definitively. 7 Q. With regard to your 8 experience in the industry, can you tell 9 us whether or not Exxon ever shipped 10 gasoline with MTBE on the Santa Fe 11 pipeline? 12 A. The Santa Fe as part of the 13 Kinder Morgan pipeline system? 14 Q. I'm talking about the 15 Santa Fe as the Santa Fe system. Can 16 you tell the jury in this case whether 17 Exxon in northern California shipped 18 gasoline out of Benicia on the Santa Fe 19 pipeline system which was blended with 20 MTBE? 21 A. Well, I have said that I 22 don't know the precise date that Kinder 23 Morgan took over the Santa Fe pipeline 24 system. The Benicia refinery was</p>
<p style="text-align: right;">Page 67</p> <p>1 MR. STACK: Are you still 2 there? 3 MS. AMRON: Yes. 4 BY MR. STACK: 5 Q. I will repeat the 6 question. With regard to the Wolverine 7 system, can you tell the jury in this 8 case in what year they established 9 tariffs for reformulated blendstock 10 gasoline and eliminated any shipment of 11 MTBE? 12 A. I cannot give you the 13 specific information. I would assume it 14 would be in the early '90s at some point 15 when MTBE was being phased out in 16 general. 17 Q. And with regard to the 18 pipeline systems in the Midwest, can you 19 tell the jury what Exxon Mobil 20 refineries ship on Explorer? 21 A. I'm sorry, which ones? 22 Q. Yes. 23 A. Again, I would say in 24 general I would expect that the Exxon</p>	<p style="text-align: right;">Page 69</p> <p>1 connected into the Kinder Morgan common 2 carrier -- northern common carrier 3 pipeline system and was producing MTBE 4 gasoline for distribution starting in 5 the early '90s. 6 So I can't tell you 7 specifically for the Santa Fe system 8 before it was taken over by the Kinder 9 Morgan. I just don't have that date. 10 Q. With regard to southern 11 California, can you tell the jury in 12 this case whether Mobil ever shipped 13 gasoline blended with MTBE on the 14 Santa Fe pipeline system? 15 A. Again, it would be the same 16 answer. I don't know the date when 17 ownership changed hands on the Santa Fe 18 pipeline system. The Torrance refinery 19 was producing MTBE gasoline from the 20 early '90s, so -- and that refinery is 21 certainly tied into the Kinder Morgan 22 common carrier pipeline system. So it 23 depends when that transfer of ownership 24 took place. I believe Kinder Morgan</p>

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<p>1 bought up those pipelines in the not too 2 distant past. 3 So if -- so basically 4 subject to knowing when that transaction 5 took place, I cannot specifically answer 6 you. 7 Q. Fair to say you don't know 8 when Kinder Morgan purchased the 9 Santa Fe pipeline system? 10 A. I think I had said that, 11 yes. 12 Q. Now, with regard to the 13 Kinder Morgan system in northern 14 California, do you know for Kinder 15 Morgan what the minimum batch size is? 16 A. I would have to check their 17 tariffs. I don't. 18 Q. With regard to shipments 19 out of Benicia, do you know what the 20 minimum size was for batching tenders 21 out of this refinery to the Kinder 22 Morgan system? 23 A. No. 24 Q. Do you know where the</p>	<p>1 A. I do not know. No, I don't 2 know. 3 Q. With regard to shipping 4 logistics, have you ever done any 5 research specifically with regard to 6 shipping logistics to determine that all 7 the product shipped on Kinder Morgan's 8 northern system is commingled? 9 MS. AMRON: Objection, 10 vague. 11 A. No, I have not. 12 Q. With regard to the Kinder 13 Morgan system, do you know -- has Exxon 14 maintained proprietary tankage along the 15 Kinder Morgan system in the period from 16 1992 to 2003? 17 MS. AMRON: Objection. Any 18 Kinder Morgan system? 19 BY MR. STACK: 20 Q. With regard to northern 21 California, for those of us who don't 22 follow the line of questioning -- with 23 regard to northern California, do you 24 know if Exxon maintains proprietary</p>
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<p>1 gathering points were in the Bay area 2 for product being shipped into Kinder 3 Morgan? 4 A. Gathering points such as 5 terminals? How do you mean? 6 Q. Yes, sir. Do you know -- 7 with respect to your knowledge of the 8 Kinder Morgan system, can you identify 9 for the jury in this case what are the 10 specific gathering points for 11 accumulation of product for shipment on 12 the system? 13 A. No, that wasn't required 14 for me to know that level of detail, so 15 I couldn't tell you. 16 Q. Do you know with regard to 17 the Benicia refinery if it directly 18 injects product into the pipeline for 19 batching and shipments on Kinder Morgan? 20 A. I don't know. 21 Q. With regard to the Kinder 22 Morgan pipeline system, do you know if 23 Exxon is the sole shipper on the Chico 24 to Reno line?</p>	<p>1 terminals and tankage along the Kinder 2 Morgan northern system? 3 MS. AMRON: Objection, 4 argumentative. 5 A. I don't know the specific 6 details of Exxon Mobil's terminaling 7 assets -- 8 Q. With regard to -- 9 A. -- along that system. 10 Q. With regard to the Kinder 11 Morgan system in Southern California, 12 can you tell the jury in this case what 13 the minimum batch size is? 14 A. No. Again, I would need to 15 check the tariffs for that. 16 Q. With regard to the 17 shipments onto the Kinder Morgan system 18 in southern California, can you tell the 19 jury where the gathering points are? 20 MS. AMRON: Objection, 21 vague. 22 A. No, I would not be able to 23 name them directly. 24 Q. With regard to the Kinder</p>

<p style="text-align: right;">Page 74</p> <p>1 Morgan system in southern California, do 2 you know if the Torrance refinery has 3 direct injection into the system? 4 A. Could you explain what you 5 mean by "direct injection"? You mean 6 pipeline to pipeline? How do you mean? 7 Q. With respect to your 8 understanding and your work in the 9 industry, do you have an understanding 10 of what the term "direct injection" 11 means when referring to product being 12 shipped from a refinery into a pipeline 13 system? 14 MS. AMRON: Objection, vague 15 and argumentative. 16 A. I don't know if Torrance 17 has that capability. 18 Q. With respect to direct 19 injection, what do you understand that 20 term to mean relative to shipment of 21 gasoline from a refinery to a pipeline? 22 MS. AMRON: Objection, vague 23 and argumentative. 24 A. Direct injection would be a</p>	<p style="text-align: right;">Page 76</p> <p>1 and answered. 2 A. No, I have not. 3 Q. With regard to the 4 refineries that you identified in the 5 Exxon Mobil refinery system, with 6 respect to the refineries you indicated 7 that they each, I believe the term you 8 used, had specific refining output 9 depending upon the configuration of the 10 refinery; am I correct? 11 A. I'm not sure I follow the 12 question. Sorry. 13 Q. In answering a question 14 about capacity which was objected to, 15 you answered saying each refinery has 16 specific production of barrels of 17 gasoline per barrels of crude 18 processed. Do you recall that 19 testimony? 20 A. Right. That was in 21 reference to is capacity a good 22 indicator of relative production of 23 gasoline. 24 Q. Now, let's start with the</p>
<p style="text-align: right;">Page 75</p> <p>1 pipeline basically directly connected up 2 to the receiving common carrier pipeline 3 as opposed to going into a -- into 4 tankage prior to being put into the 5 common carrier pipeline. 6 Q. With respect to the Kinder 7 Morgan southern California system, did 8 you conduct an analysis of that system 9 at any point in your career relative to 10 shipping logistics to determine what 11 percentage of gasoline product shipped 12 on Kinder Morgan was commingled? 13 A. I have not, but when I have 14 looked at it, I've established that 15 commingling is the common mode of 16 shipping on there. 17 Q. With respect to the 18 specific pipeline we're talking about, 19 the southern California Kinder Morgan 20 system, have you ever undertaken any 21 analysis in your professional experience 22 to determine what percentage of gasoline 23 shipments on that system are commingled? 24 MS. AMRON: Objection, asked</p>	<p style="text-align: right;">Page 77</p> <p>1 Benicia refinery. The Benicia 2 refinery -- first of all, do the 3 products produced at Benicia vary 4 seasonally? 5 A. I'm sure they do. 6 MS. AMRON: Objection, for 7 lack of time frame. 8 Q. And with regard to the 9 Benicia refinery during the period it 10 was owned by Exxon, can you tell the 11 jury how the seasonal output of the 12 refinery varied? 13 A. Well, I cannot say 14 specifically for Benicia because I've 15 not looked specifically at the records 16 for Benicia, but I can give you the sort 17 of common trend for the refineries in 18 the U.S. in terms of the seasonal shifts 19 in output. 20 Q. Can you, specifically with 21 regard to Benicia, tell the jury how the 22 seasonal production changed to meet 23 demand for different products? 24 MS. AMRON: Asked and</p>

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<p>1 answered.</p> <p>2 A. Specifically to Benicia I</p> <p>3 cannot.</p> <p>4 Q. Can you tell the jury in</p> <p>5 this case what percentage of product</p> <p>6 produced at Benicia was motor fuels?</p> <p>7 A. No. Again, I do not have</p> <p>8 access to that kind of what is commonly</p> <p>9 proprietary information for every</p> <p>10 refinery in the U.S.</p> <p>11 Q. Can you tell the jury with</p> <p>12 regard to the Benicia refinery what</p> <p>13 percentage of crude oil processed was</p> <p>14 manufactured into middle distillate or</p> <p>15 distillate products?</p> <p>16 A. No. It's the same answer.</p> <p>17 I don't have access to that proprietary</p> <p>18 information.</p> <p>19 Q. With regard to the Benicia</p> <p>20 refinery, do you know if they made</p> <p>21 petrochemical feedstocks?</p> <p>22 A. Can you be specific? What</p> <p>23 types of feedstocks?</p> <p>24 Q. Yes, sir. Did they</p>	<p>1 LPG; propane; and butanes. Sometimes</p> <p>2 light ends from refineries including</p> <p>3 ethane will also be commonly utilized to</p> <p>4 produce petrochemicals.</p> <p>5 Q. How about aromatics?</p> <p>6 A. Absolutely.</p> <p>7 Q. And with regard to the</p> <p>8 refinery operations at the Benicia</p> <p>9 refinery, do you know what percentage of</p> <p>10 production went to production of</p> <p>11 aromatics, naphthas, LPG, butanes, or</p> <p>12 ethane for petrochemical manufacturing</p> <p>13 operation?</p> <p>14 MS. AMRON: Objection,</p> <p>15 compound.</p> <p>16 A. No. Again, I don't have</p> <p>17 access to any of the yield data for the</p> <p>18 Benicia refinery. So I -- I could</p> <p>19 estimate it, I suppose, but I cannot</p> <p>20 tell you the actual numbers.</p> <p>21 Q. When you talked about</p> <p>22 ranking the capacity of Exxon and Mobil</p> <p>23 refineries, first of all, you combined</p> <p>24 those for the period 1985 to 2003; am I</p>
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<p>1 specifically make chemicals for use in</p> <p>2 petrochemical manufacturing of products</p> <p>3 other than motor fuels or engine fuels?</p> <p>4 A. I mean, can you say</p> <p>5 specifically what products?</p> <p>6 Q. Well, let me back it up and</p> <p>7 ask you because you are the expert.</p> <p>8 What are the streams which are</p> <p>9 manufactured at refineries which are</p> <p>10 used as petrochemical feedstocks for</p> <p>11 manufacturing chemicals?</p> <p>12 MS. AMRON: I'm just going</p> <p>13 to object that Mr. Burke is not here as</p> <p>14 an expert witness. He is here as a</p> <p>15 percipient witness. And so for you to</p> <p>16 be asking him questions in a expert</p> <p>17 capacity is inappropriate.</p> <p>18 BY MR. STACK:</p> <p>19 Q. You can answer the question</p> <p>20 if you can, Mr. Burke.</p> <p>21 A. Sure. A number of streams</p> <p>22 are processed into petrochemicals:</p> <p>23 different types of naphthas, light and</p> <p>24 heavy naphthas with different qualities;</p>	<p>1 correct?</p> <p>2 MS. AMRON: I think that</p> <p>3 mischaracterizes his testimony.</p> <p>4 A. I'd have to look -- I think</p> <p>5 I was asked what was the combined</p> <p>6 capacity.</p> <p>7 Q. Yes, sir. I don't mean to</p> <p>8 mischaracterize your testimony. But as</p> <p>9 I recall, during the period 1985 to 2003</p> <p>10 you were asked to consider the combined</p> <p>11 refining capacity of Exxon and Mobil and</p> <p>12 determine what their ranking was</p> <p>13 together in terms of thousands of</p> <p>14 barrels per day production; am I</p> <p>15 correct?</p> <p>16 MS. AMRON: Again, I think</p> <p>17 that mischaracterizes the testimony.</p> <p>18 The question was combining them before</p> <p>19 the merger. After the merger they were</p> <p>20 combined.</p> <p>21 A. So you are asking if that</p> <p>22 was correct? Yes, I was asked to give</p> <p>23 my view of the relative capacity share</p> <p>24 of the Exxon/Mobil combined facilities</p>

21 (Pages 78 to 81)

<p style="text-align: right;">Page 82</p> <p>1 prior to the merger.</p> <p>2 Q. And with regard to the</p> <p>3 analysis that you did of refining</p> <p>4 capacity, did you -- as part of your</p> <p>5 work and based on your experience, did</p> <p>6 you identify what percentage of</p> <p>7 throughput of the various refineries you</p> <p>8 looked at was ultimately produced in the</p> <p>9 form of gasoline or motor fuels?</p> <p>10 MS. AMRON: I'm going to</p> <p>11 object as vague.</p> <p>12 A. You are talking about with</p> <p>13 respect to Exxon/Mobil facilities?</p> <p>14 Q. Yes, sir. For example, in</p> <p>15 a particular year if Exxon was ranked</p> <p>16 number one and was producing something</p> <p>17 on the order of, you know, 1,955,000</p> <p>18 barrels per day, can you tell us what</p> <p>19 percentage of that throughput was made</p> <p>20 into clean products or motor fuels?</p> <p>21 MS. AMRON: I'm going to</p> <p>22 object to asking this witness a</p> <p>23 hypothetical when he is here --</p> <p>24 MR. STACK: It is not a</p>	<p style="text-align: right;">Page 84</p> <p>1 a variety of products manufactured by</p> <p>2 refineries other than just motor fuels?</p> <p>3 A. Absolutely, yes.</p> <p>4 Q. And with regard to</p> <p>5 petrochemical feedstocks, did you look</p> <p>6 to see how Mobil ranked during the</p> <p>7 period 1985 to 2000 for production of</p> <p>8 petrochemical feedstocks?</p> <p>9 A. No. I didn't look at all</p> <p>10 at petrochemical feedstocks, no.</p> <p>11 Q. Did you look for Exxon</p> <p>12 Mobil -- pardon me, for Exxon during the</p> <p>13 same period 1985 to 2000 as to the</p> <p>14 production of petrochemical feedstocks</p> <p>15 at its refineries?</p> <p>16 MS. AMRON: Objection,</p> <p>17 relevance.</p> <p>18 A. No, I did not.</p> <p>19 MR. STACK: I would concur</p> <p>20 with that, but we will have to go</p> <p>21 further nonetheless.</p> <p>22 THE WITNESS: The answer is</p> <p>23 no, I did not.</p> <p>24 BY MR. STACK:</p>
<p style="text-align: right;">Page 83</p> <p>1 hypothetical at all. I'm asking him if</p> <p>2 he specifically calculated how much of</p> <p>3 the production, when he ranked it as</p> <p>4 number one, was gasoline as opposed to</p> <p>5 throughput for production of other</p> <p>6 products.</p> <p>7 MS. AMRON: If that's the</p> <p>8 question you want to ask, that's fine.</p> <p>9 That's not the question you asked.</p> <p>10 A. I did the ranking based</p> <p>11 simply on crude oil processing capacity.</p> <p>12 Q. And with regard to the</p> <p>13 refineries you looked at, we take them</p> <p>14 one by one. Billings, do you know what</p> <p>15 percentage of throughput of total</p> <p>16 capacity was manufactured into motor</p> <p>17 fuels at Billings?</p> <p>18 A. No. The answer is going to</p> <p>19 be no for each one of these because I --</p> <p>20 that information is proprietary and is</p> <p>21 not available, basically.</p> <p>22 Q. With respect to the work</p> <p>23 that you've done in your professional</p> <p>24 career, is it fair to say that there are</p>	<p style="text-align: right;">Page 85</p> <p>1 Q. So when you testified and</p> <p>2 said that the combined refining capacity</p> <p>3 from 1985 to 2000 for Exxon/Mobil ranked</p> <p>4 number one, you were talking about total</p> <p>5 throughput, not specifically gasoline</p> <p>6 production; am I correct?</p> <p>7 A. That's correct.</p> <p>8 Q. And with regard to the</p> <p>9 period from 1985 to 2000, Mobil was a</p> <p>10 competitor of Exxon; am I correct?</p> <p>11 A. Yes, you are correct.</p> <p>12 Q. And fair to say based on</p> <p>13 your prior testimony you didn't develop</p> <p>14 statistics to specifically rank Exxon or</p> <p>15 Mobil for its individual refining</p> <p>16 capacity in the years 1985 to 2000? Am</p> <p>17 I correct?</p> <p>18 A. Well, I haven't ranked any</p> <p>19 of them. It is based on my general</p> <p>20 knowledge of -- as I recall, over the</p> <p>21 years Exxon and Mobil individually have</p> <p>22 consistently been in the top five</p> <p>23 rankings on crude oil throughput</p> <p>24 capacity. So in a combined basis, which</p>

22 (Pages 82 to 85)

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<p>1 is what I was asked, and based on my 2 general knowledge of those two 3 corporations, if you combine those two 4 very large market shares on a capacity 5 basis, I'm comfortable saying that the 6 combined was number one during 7 essentially that entire period. 8 MR. STACK: Move to strike 9 as nonresponsive. 10 BY MR. STACK: 11 Q. The question is, did you 12 specifically come up with a numerical 13 rank for Mobil refining 1985 to 2000? 14 MS. AMRON: Object as asked 15 and answered. 16 A. No, I did not. 17 Q. With regard to Exxon, did 18 you specifically come up with a 19 numerical rank for Exxon for the period 20 1985 to 2000? 21 A. No, I did not. 22 Q. With regard to the opinions 23 that you expressed in your reports, At 24 any point in time did you express any</p>	<p>1 statistics concerning national market 2 share? 3 A. No, I did not. 4 Q. With regard to the National 5 Petroleum News, can you tell the jury in 6 this case how the National Petroleum 7 News gathers its statistics to identify 8 market share for different branded 9 operations? 10 A. I don't know specifically. 11 I know that they have done it for a long 12 time. It's -- their information and 13 data is quoted and utilized pretty 14 extensively. I can't tell you offhand 15 exactly how they gather all that 16 information. It's.... 17 Q. With regard to ranking 18 Exxon and Mobil, either combined or as 19 Exxon Mobil, for refining capacity, you 20 base that on your company's proprietary 21 database? 22 A. This is primarily based on 23 annual listings that come out of the Oil 24 and Gas Journal. We also track --</p>
Page 87	Page 89
<p>1 opinions about retail market share for 2 Exxon or Mobil? 3 MS. AMRON: I'm just going 4 to object, vague. You are talking about 5 his -- the three reports you've marked 6 as exhibits here? 7 BY MR. STACK: 8 Q. With regard to the three 9 reports we've marked as exhibits, 10 Exhibits 5, 6, and 7, setting forth your 11 opinions in this case, at any point in 12 time did you express any opinions in any 13 of those reports or otherwise in your 14 testimony in depositions relative to the 15 retail market share of Exxon or Mobil? 16 A. Well, I did touch on retail 17 market share for Exxon and Mobil in 18 Queens, but that's the only area that I 19 did touch on it, where I reported some 20 statistics on market share in Queens 21 County. 22 Q. And did you at any point in 23 time in the reports identified as 24 Exhibits 5, 6, and 7 ever develop any</p>	<p>1 there's a similar listing that's put 2 together annually by the EIA, Energy 3 Information Administration. I think the 4 NPRA also puts out a listing which -- 5 they are all quite similar. So it is 6 based on sort of those -- combination of 7 those. 8 Q. And with regard to the 9 testimony you gave here relative to 10 establishing a rank for refining 11 capacity, you are basing that on your 12 database or upon EIA, NPRA, and the 13 Petroleum News or Oil and Gas Journal? 14 Which is it? 15 MS. AMRON: Objection, 16 compound and argumentative. 17 MR. STACK: Hardly. 18 A. I would say it is based on 19 Oil and Gas Journal. 20 Q. And do you know how the Oil 21 and Gas Journal obtains information 22 concerning refining capacity in the 23 period of time that you were looking at? 24 A. I'm not precisely sure if</p>

<p style="text-align: right;">Page 90</p> <p>1 they survey the individual refiners or 2 precisely how they get it. I know their 3 survey has been around for decades. It 4 is certainly a resource used in the 5 industry and is reasonable, I think, for 6 tracking a macro level ranking of 7 overall capacity for the industry. 8 Q. And with regard to tracking 9 overall macro level capacity in the 10 industry, do you know how the Oil and 11 Gas Journal gathers the information that 12 you relied on in offering testimony in 13 this case? 14 MS. AMRON: Asked and 15 answered. 16 A. No, I don't. 17 Q. With regard to the work 18 that you have done in this case, did you 19 at any point in time speak to any other 20 experts retained by the plaintiffs in 21 this case before appearing to testify 22 here today? 23 A. No. 24 Q. With respect to the</p>	<p style="text-align: right;">Page 92</p> <p>1 know what it is. 2 Q. Yes, sir. It's an 3 agreement between the parties as to what 4 facts are that are not in dispute. What 5 I'm asking you is, did you prepare a 6 table setting forth Exxon Mobil's 7 ranking among refiners in the United 8 States from 1985 through 2003, including 9 the number of barrels per day refined, 10 for use by counsel in this case? 11 A. I did prepare a table like 12 that. I was asked to do so. 13 But prior to starting -- to 14 going ahead with this deposition I was 15 told that I could not rely on that 16 information that was gathered. So I've, 17 to the best of my ability, not relied on 18 that and relied on my knowledge of -- 19 gathered over the course of my career. 20 Q. And with respect to the 21 source of information, what information 22 did you look at to develop a table 23 setting forth Exxon Mobil's ranking 24 among refiners in the United States from</p>
<p style="text-align: right;">Page 91</p> <p>1 testimony that you gave here today, what 2 documents did you review, if any, to 3 testify in this deposition? 4 A. Basically none. I was told 5 not to prepare for this deposition, that 6 basically it had to be based on my 7 general knowledge of the industry and 8 that's what I'm drawing upon. 9 Q. At any point in time did 10 you assist counsel in preparing a 11 stipulation, proposed stipulation to be 12 entered into between Exxon Mobil and the 13 City of New York? 14 A. Could you explain what that 15 is? I'm sorry. I'm not following what 16 that is. 17 Q. Yes, sir. At any point in 18 time did you provide information to 19 counsel setting forth the average 20 refining capacity per day for Exxon 21 Mobil for the period 1985 to 2003 for 22 use in a stipulation? 23 A. Sorry. Could you explain 24 what a stipulation is? I just don't</p>	<p style="text-align: right;">Page 93</p> <p>1 1985 to 2003? 2 A. I used the Oil and Gas 3 Journal. Their annual refining listing 4 comes out -- 5 Q. And when you expressed your 6 position relative to the ranking of 7 Exxon Mobil as a refiner based on 8 capacity from 1985 to 2003 in this 9 deposition, were you relying upon the 10 work that you did in reviewing the Oil 11 and Gas Journal? 12 MS. AMRON: Objection, asked 13 and answered. 14 A. Not the current work of 15 putting that specific table together. 16 Over the years that's -- the Oil and Gas 17 Journal publishes its annual analysis 18 every year. As I mentioned, we take 19 that information that's part of our 20 input into our database system. I know 21 from reviewing that over the years that 22 Exxon and Mobil have consistently 23 ranked, you know, high on the national 24 rankings as far as crude oil capacity.</p>

<p style="text-align: right;">Page 94</p> <p>1 So that's what I'm basing my statement 2 on today. 3 Q. So you are basing your 4 testimony in this deposition on the 5 annual review of refining capacity 6 that's compiled by the Oil and Gas 7 Journal; am I correct? 8 MS. AMRON: Objection, 9 mischaracterizes his testimony and asked 10 and answered. 11 A. I would say that's one 12 input that I have used over the years. 13 I mentioned the EIA puts together a 14 similar type of capacity listing. It is 15 quite similar in terms of the results 16 of -- that the Oil and Gas Journal puts 17 out. The NPRA also puts out a similar 18 type of master listing. I think the 19 NPRA largely draws on the EIA data. So 20 it's -- yes, it's based on the Oil and 21 Gas Journal annual reports over the 22 years as well as these other sources. 23 Q. With regard to the work 24 that you did in this case, did you at</p>	<p style="text-align: right;">Page 96</p> <p>1 MR. STACK: What privilege 2 are you asserting? 3 MS. AMRON: Hang on a second 4 and let me go off the record for a 5 second. 6 MR. STACK: There's a 7 pending question I would like an answer 8 to. 9 MS. AMRON: Well, I have 10 directed him not to answer that question 11 on the grounds of privilege. So if you 12 want to talk about the privilege for a 13 second, let's go off the record. 14 MR. STACK: I just want you 15 to identify what privilege attaches to 16 your communications to Mr. Burke. 17 MS. AMRON: The one I 18 identified already was attorney work 19 product. If you want me to give that a 20 minute's more thought and talk about it, 21 I'm happy to do that off the record. 22 MR. STACK: Well, the 23 pending question is not asking for work 24 product.</p>
<p style="text-align: right;">Page 95</p> <p>1 any point in time do any analysis to 2 determine to what terminals Mobil 3 shipped product in southern California? 4 A. You are referring with 5 respect to the exhibits? 6 Q. No, sir. At any point in 7 time did you do any work for counsel 8 prior to this deposition in which you 9 identified to what terminals product 10 from the Torrance refinery would be 11 shipped in southern California? 12 MS. AMRON: I'm going to 13 object to that as getting -- as attorney 14 work product. 15 BY MR. STACK: 16 Q. You can answer it if you 17 can, sir. 18 MS. AMRON: No, you can't. 19 MR. STACK: Are you 20 directing him not to answer? 21 MS. AMRON: You're coming 22 into -- you know, you are asking about a 23 privileged area, and so you don't just 24 get to --</p>	<p style="text-align: right;">Page 97</p> <p>1 BY MR. STACK: 2 Q. It is: At any point in 3 time Mr. Burke, did you identify or list 4 out terminals which would receive 5 product from the Torrance refinery 6 operated by Mobil during the period from 7 1985 to 2000? 8 MS. AMRON: I'm sorry. Can 9 you read back the question? 10 (The court reporter read the 11 record as follows: 12 "QUESTION: It is: At any 13 point in time Mr. Burke, did you 14 identify or list out terminals which 15 would receive product from the Torrance 16 refinery operated by Mobil during the 17 period from 1985 to 2000?") 18 MS. AMRON: In the course of 19 this litigation? 20 MR. STACK: Yes. 21 MS. AMRON: I am going to 22 object and I will let the witness answer 23 the question. 24 THE WITNESS: Well, similar</p>

25 (Pages 94 to 97)

<p style="text-align: right;">Page 98</p> <p>1 to preparing a table of Exxon Mobil 2 capacities and the ranking, I began the 3 preparation of looking at Exxon Mobil's 4 facilities outside of the East Coast, 5 but then I was told that that work could 6 not be utilized for this deposition and 7 it has not been used for this 8 deposition. So I have not drawn on any 9 information which would have been 10 specific to Exxon Mobil's facilities 11 outside of the East Coast, which I 12 already testified to. 13 BY MR. STACK: 14 Q. And with regard to the work 15 that you did in preparing a list of 16 terminals, what information did you 17 review to prepare a list of terminals 18 which would have received product from 19 Mobil's Torrance refinery during the 20 period 1985 to 2000? 21 A. Well, I didn't specifically 22 try to tie in terminals to individual 23 refineries. I just felt that that 24 was -- would be too much of a challenge,</p>	<p style="text-align: right;">Page 100</p> <p>1 terminals around the country. 2 MS. AMRON: Bill, before 3 you -- I'm going to interpose an 4 objection to this line of questioning, 5 that you are asking a witness about a 6 document that counsel sent to you in a 7 effort to resolve a dispute between us 8 and I think it is inappropriate for you 9 to be using that document as a basis for 10 asking this witness questions. So I'm 11 going to object to the line of this 12 entire questioning as also outside the 13 scope of his direct testimony. 14 MR. STACK: Well, it is 15 actually not outside the scope of his 16 direct testimony and I think it is 17 directly relevant in this respect: If 18 the witness was asked as an expert to 19 assemble technical, specialized, and 20 otherwise scientific information not 21 normally within the understanding of a 22 lay witness or lay juror, and he was 23 asked to do so and prior to his 24 deposition did in fact assemble</p>
<p style="text-align: right;">Page 99</p> <p>1 not enough available information to do 2 that. But -- so to that extent, I 3 really didn't try to attempt that. 4 Q. Did you at any point in 5 time identify the Atwood terminal in 6 Anaheim, California as a terminal which 7 would receive product and gasoline from 8 Mobil storage refinery during the period 9 1985 to 2000? 10 A. I believe Atwood came up as 11 a Exxon or Mobil terminal. 12 Q. With regard to the work 13 that you have done on this case, what 14 information did you review to determine 15 that the Atwood terminal in Anaheim, 16 California received product from Mobil's 17 storage refinery? 18 A. Well, again, I didn't feel 19 I would be able to directly link those. 20 The source of the information for the 21 listing of terminals was from the same 22 source I had used in previous testimony, 23 which is an OPIS terminal listing book 24 or manual, which basically lists</p>	<p style="text-align: right;">Page 101</p> <p>1 information of a specialized nature 2 concerning the refining capacity of 3 Exxon and Mobil during the years '85 to 4 2003, the location of certain refineries 5 operated by Exxon and Mobil, and the 6 time period in which they were operated, 7 the distribution of product from the 8 Torrance refinery, the distribution of 9 product from the Benicia refinery in 10 California, and then information 11 concerning the retail sales of gasoline 12 by Exxon and Mobil during the period 13 from 1990 to 2002 and he did so as an 14 expert and did so relying upon 15 technical, specialized information, then 16 appears here to testify after assisting 17 counsel in that capacity and attempts to 18 testify as a percipient witness 19 pertaining to the same subjects, I think 20 that's highly relevant. Not only do I 21 think it's highly relevant, I think it 22 is directly relevant to whether or not 23 he is really testifying as a percipient 24 witness. We, of course, have had a</p>